

Larry E. Craig, Chairman
Jade West, Staff Director

No. 50

Legislative Notice

Editor, Judy Gorman Prinkey

February 19, 1998

Overriding the Veto of H.R. 2631 – FY98 Military Construction Line-Item Veto Disapproval Bill

NOTEWORTHY

- By a unanimous consent agreement of February 12, 1998, the Senate will proceed to the consideration of the veto message to accompany H.R. 2631, the Military Construction Line-Item Veto Disapproval bill on Wednesday, February 25 at 11:30 a.m. There will be one hour for debate on the message, equally divided between the chairman and the ranking Member, with an additional hour under the control of Senator McCain. Following the expiration or yielding back of time, the Senate is to proceed to a vote on the veto message. A veto override requires two-thirds of both houses. The House of Representatives on February 5 voted to override by a vote of 347-69.
- On November 13, President Clinton vetoed H.R. 2631 which would have restored funding for the 38 military construction projects he earlier line-item vetoed. It had passed in the House by a veto-proof margin (352-64) November 8, 1997, and been passed by the Senate on November 9 by voice (on October 30, the Senate passed its own version of the bill, S. 1292, by a vote of 69-30).
- H.R. 2631 marks both Congress's first attempt to overturn a line-item veto, and now a first attempt in history to override a veto of such a bill. This high-stakes chess match began on September 30 of last year when President Clinton signed the \$9.2 billion Military Construction Appropriations Act of 1998 [P.L. 105-45], but on October 6, used the line-item veto to cancel 38 projects in the law, amounting to \$287 million.
- The 38 canceled projects affect 24 states: California; Colorado; Florida; Georgia; Hawaii; Idaho; Indiana; Kansas; Kentucky; Maryland; Montana; Nevada; New Mexico; New York; North Carolina; Pennsylvania; South Carolina; South Dakota; Tennessee; Texas; Utah; Virginia; West Virginia and Wisconsin. (See attached chart.)
- On February 12, a U.S. District judge ruled that the line-item veto was unconstitutional, leaving further action in the hands of the Supreme Court.

BACKGROUND

A History of the Canceled Items

Military Construction Items Canceled

The President has had line-item veto authority since January 1, 1997, but first used it on August 11 to line-item veto two tax provisions from the Taxpayer Relief Act. On October 6, 1997, the President again exercised his new line-item veto authority by canceling 38 projects in 24 states from the \$9.2 billion 1998 Military Construction Appropriations Bill (P.L. 105-45). Canceling these projects yields \$287 million. But the criteria used by the Administration to choose projects for cancellation was faulty, as revealed during Senate hearings, and later admitted by the President himself.

In response to the President's line-item veto of 38 projects, and in conformance with the Line-Item Veto Act, Appropriations Committee Chairman Ted Stevens (R-AK) introduced S. 1292, a disapproval bill, on October 6, 1997. On October 30, the Senate passed S. 1292 by a vote of 69-30, disapproving the President's vetoes on 36 of the 38 projects.

On October 7, 1997, Representatives Ed Whitfield (R-KY) and Joe Skeen (R-NM) each introduced House bills to disapprove all 38 projects the President line-item vetoed in the Military Construction Appropriations Bill. On November 8, 1997, the House passed H.R. 2631 by a vote of 352-64. H.R. 2631 restored funding for all 38 projects. The Senate cleared H.R. 2631 by voice vote on November 9, 1997, and President Clinton vetoed the disapproval bill on November 13, 1997.

President Clinton's Reasons

In his veto message of the disapproval bill on November 13 [H. Doc. 105-172], the President said:

"To the House of Representatives:

"I am returning herewith without my approval H.R. 2631, 'An Act disapproving the cancellations transmitted by the President on October 6, 1997, regarding Public Law 105-45.'

"Under the authority of the Line Item Veto Act, on October 6, 1997, I canceled 38 military construction projects to save the taxpayers \$287 million. The bill would restore all of the 38 projects.

"The projects in this bill would not substantially improve the quality of life of military service members and their families, and most of them would not likely use funds for construction in FY 1998. *While the bill does restore funding for projects that were canceled based on outdated information* provided by the Department of Defense, I do not endorse restoration of all 38 projects.

"The Administration remains committed to working with the Congress to restore funding for those projects that were canceled as a result of data provided by the Department of Defense that was out of date.

William J. Clinton.

The White House, November 13, 1997." [italics added]

Upon initially using the line-item veto of the Military Construction Appropriations Bill on October 6, 1997, President Clinton, in his "special veto message" [H. Doc. 105-147], offered the following three reasons for each of the 38 canceled items: "The project is being canceled because:

- "it was not requested in the President's FY 1998 Budget;
- "it would not substantially improve the quality of life of military service members and their families; and,
- "architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998."

In clarifying the final criteria, Franklin Raines, Director of the Office of Management and Budget claimed that, "Ordinarily, a project won't be included by the Defense Department in the budget unless 35 percent of the design work has been completed. In this case, *these projects had zero completed*, so they would never have qualified in the normal military process to be on the priority list" [White House Briefing on Line-Item Veto, 10/6/97, italics added].

However, this information was not wholly accurate, as hearings at the full Appropriations Committee level revealed.

Senate Committee Action

On October 6, Chairman Stevens held a hearing to review the status of the 38 vetoed projects in the military's future budget plans and determine whether the projects could be executed in FY 1998. Senator Stevens emphasized that the meeting was convened to seek only factual information about the projects, and that the Pentagon witnesses were not expected to defend any project or the President's decision, but were free to do so.

The three witnesses included: Major General Clair F. Gill, Director of the Army Budget; Major General Eugene Lupia, Air Force Civil Engineer; and Rear Admiral F. Amerault, USN, Director of Navy Budget/Fiscal Management.

Throughout the hearing, Senators asked the witnesses whether particular vetoed projects met the criteria as set out by the President. Most questions centered on the issue of whether each project could be executed in FY 1998 and if that project were mission essential. In every case, the answers were affirmative, confirming Senator Steven's statement that the White House's decision conflicted with the military needs of the armed forces. However, the meeting revealed that there were only two programs where *no* ["zero"] design work had been initiated.

Administration Admits Error

In trying to explain this discrepancy, Deputy Defense Secretary John Hamre wrote in a letter to Chairman Stevens that some of the information upon which the Administration made their decisions "may have been outdated" [*Washington Post*, 10/10/97]. For example, according to *Congressional Quarterly*, the Army reported that no design work had been done on a Fort Campbell, KY, project, when in fact the design was 90 percent complete [10/25/97, p. 2623].

Subsequently, on Thursday, October 23, Raines admitted that several projects were mistakenly crossed out of the military construction bill. In a letter to Senator Stevens, Raines said, "We are committed to working with Congress to restore funding for those projects that were canceled as a result of inaccuracies in the data provided by the Department of Defense" [*Washington Post*, 10/23/97].

Other Considerations

Furthermore, during the hearing with the Service chiefs, some Senators stated that the President vetoed some programs that would significantly improve the day-to-day working conditions of our men and women in uniform, which could be argued as adding to a soldier's quality of life. One such program highlighted by Military Construction Subcommittee Chairman Senator Conrad Burns was the dining facility at Malstrom Air Force Base in Montana. This building was originally built for another purpose and only later changed to a dining facility whose serving areas might not pass a health inspection. Yet, the President line-item vetoed the money required to upgrade this facility.

The Line-Item Veto Act

The Line Item Veto Act [P.L. 104-130, 2 USCA §691 *et seq.* (1997)] was passed by the 104th Congress. The Act provides the President with the authority to cancel in whole any:

- Dollar amount of discretionary budget authority;
- Item of new direct spending; or
- Limited tax benefit.

President's Special Veto Message. When a President exercises that authority, he has five days (Sundays excluded) to send a special veto message to Congress [§691]. That message must specify that the President has determined that the cancellation will "reduce the federal budget deficit; not impair any essential Government functions; and not harm the national

interest." Further, it must specify the dollar amounts involved, the reasons for the veto, its expected economic impact, and more [§691a]. Vetoed items are canceled as soon as Congress receives the message [§691b]. A veto message is sent to both the Senate and the House of Representatives and is referred to the Budget Committees and the relevant authorizing or appropriating committees.

Introduction of a Disapproval Bill in the Senate. To qualify for expedited consideration, a bill disapproving the President's veto must be introduced within five days of session after receiving the President's message [§691d(c)]. Generally, that bill must be acted on within 30 days of session [§691d(b)]. The disapproval bill must refer exclusively to the reference numbers of the President's vetoes, but may contain any combination of his cancellations [see §691e(6)]. A disapproval bill is referred to the relevant committee which must report it within seven days of session but may amend it. If the committee fails to act, the bill is discharged automatically [¶691d(e)(1)]. (If a bill is received from the House, it goes on the Senate Calendar and is not referred to a committee [¶691d(e)(2)].)

Disapproval Bill on the Senate Floor. A motion to proceed to consideration of a disapproval bill is not debatable [¶691d(e)(5)]. Amendments are in order only if they strike a reference number of a cancellation or insert a reference number that is in the President's message but not the disapproval bill [¶691d(e)(4)(A)]. However, the rule limiting amendments may be waived by an affirmative vote of three-fifths of Senators [¶691d(e)(4)(B)]. Generally, Senate consideration of a disapproval bill is limited to no more than 10 hours, equally divided, but may be expanded to 15 hours [¶691d(e)(6)]. Debate on any amendment is limited to one hour [¶691d(e)(7)]. A motion to recommit is not in order [¶691d(e)(8)]. If the Senate is considering a message from the House on a disapproval bill, consideration is limited to four hours with debate on motions and amendments limited to 30 minutes, equally divided [¶691d(e)(10)]. Generally, the Senate will consider only one disapproval bill for each veto message [¶691d(e)(3)].

Disapproval Bill in Conference. If a disapproval bill is sent to a conference, the scope of the conference is limited: The conferees *must* include every cancellation where the two houses agreed but may *not* include any cancellation that neither house agreed to [¶691d(f)(4)]. In the Senate, consideration of a conference report is limited to no more than four hours, equally divided. A motion to recommit the conference report is not in order [¶691d(f)(3)].

Disapproval Bill Must be Signed. Once Congress has approved a conference report on a disapproval bill, it must be presented to the President. The President's vetoes/cancellations are not *disapproved* unless the bill becomes law, and it becomes law with the President's signature, after 10 days without his signature, or over his veto. [This is provided for not in the Act, but by Article I of the U.S. Constitution.]

Recent Veto Override Attempts in the Senate

During President Clinton's tenure, the Senate has only attempted to override his veto two times and never a line-item veto. The last time was September 26, 1996, when the Senate sustained the veto of H.R. 1833, the Partial Birth Abortion Ban Act. The other vote was on H.R. 1058, Securities Litigation Reform Act when the Senate overrode the veto on December 22, 1995 (and the House overrode on Dec. 20, 1995).

Staff Contact: Dr. Yvonne Bartoli, 224-2946
[Attachment: chart]

Vetoed Projects in the 1998 Military Construction Appropriations Bill

	Project	State	Location	Budget
1	Command and control facility	CA	Fort Irwin	\$2.7 million
2	Central wash station for wheeled and tracked vehicles	CA	Fort Irwin	\$8.5 million
3	Two buildings and harbor area to protect Marine Mammal Program	CA	Coronado Naval Amphibious Base	\$10.1 million
4	New Marine Corps Reserve Center	CA	Pasadena	\$6.7 million
5	Army railyard expansion	CO	Fort Carson	\$16 million
6	Navy pier improvements	FL	Mayport Naval Station	\$17.9 million
7	Extension of runway and acquisition of clear zone for another runway for training aircraft	FL	Whiting Field	\$1.3 million
8	Facility for combat search and rescue training	GA	Moody Air Force Base	\$6.8 million
9	New space for Asian-Pacific Center for Security studies.	HI	Fort Derussey	\$9.5 million
10	Facility for low-level navigation	ID	Mountain Home Air Force Base	\$9.2 million
11	Facility for analyzing combat crews and directing flight operation	ID	Mountain Home Air Force Base	\$3.8 million
12	Maintenance and engineering support facility for shipboard chemical and biological warfare detection devices	IN	Crane Naval Surface Warfare Center	\$4.1 million
13	Civil Engineering Complex	IN	Grissom Air Reserve Base	\$8.9 million
14	Transportation complex with vehicle operations facility	KS	McConnel Air Force Base	\$2.9 million
15	Vehicle maintenance shop and storage for forward support battalion and combat support hospital	KY	Fort Campbell	\$9.9 million
16	Army qualification training range modernization	KY	Fort Knox	\$7.2 million
17	Additional hangar space for maintenance operations on unmanned air vehicles	MD	St. Inigoes Naval Electronic Systems Engineering Activity	\$2.6 million
18	Additions to dry and cold storage equipment and food preparation areas for dining facility	MT	Malstrom Air Force Base	\$4.5 million
19	Facility to support inspection and testing of explosive munitions	NV	Nellis Air Force Base	\$2.0 million
20	Repair launch facilities for missile systems	NM	White Sands Missile Range	\$6.9 million
21	Theater air simulation facility wing operations	NM	Kirtland Air Force Base	\$14.0 million

Vetoed Projects in the 1998 Military Construction Appropriations Bill

	Project	State	Location	Budget
22	Target gunnery range for joint rotary and fixed wing operations	NY	Fort Drum	\$9.0 million
23	Readiness office and combat arms training space for the Air Force Reserve	NY	Niagara Falls	\$2.1 million
24	Military Operations on Urbanized Terrain training complex	NC	Fort Bragg	\$7.9 million
25	Army Reserve training facility for multiple training missions	PA	Oakdale	\$6.0 million
26	Marine Corps Reserve Training Center and aircraft maintenance hangar upgrade	PA	Johnstown	\$14.0 million
27	Army National Guard battle simulation center at Leesburg training site	SC	Eastover	\$3.8 million
28	Hangar, maintenance, classroom and other support for Army National Guard	SD	Rapid City	\$5.2 million
29	Air dryer facility for aerodynamic testing	TN	Arnold Air Force Base	\$9.9 million
30	Expansion of ammunition supply facility	TX	Fort Bliss	\$7.7 million
31	Consolidation of B-1B squadron operations facility	TX	Dyess Air Force Base	\$10.0 million
32	Aircraft corrosion control painting facility	TX	Laughlin Air Force Base	\$4.8 million
33	Army Reserve Center	UT	Camp Williams	\$12.7 million
34	Navy air traffic control facility, radar tower, and supporting infrastructure	VA	Norfolk Naval Air Station	\$4.0 million
35	Navy waterfront improvements, wharf for ship repair	VA	Norfolk Naval Shipyard	\$19.9 million
36	Earth-covered magazine for storing Tomahawk missiles	VA	Yorktown Naval Weapons Station	\$3.3 million
37	Expanded facility for Army National Guard units	WV	Camp Dawson	\$6.8 million
38	Aerial port training facility, Air Force Reserve	WI	Mitchell Air Reserve Station	\$4.2 million